

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 11 CR 259

:

-against-

:

United States Courthouse
Brooklyn, New York

GAVRIEL BIDANY, :

May 5, 2011
9:00 o'clock a.m.

Defendant. :

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TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE RAMON E. REYES, JR.
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: LORETTA E. LYNCH
United States Attorney
BY: DAVID SARRATT
LISA KRAMER
Assistant United States Attorneys
271 Cadman Plaza East
Brooklyn, New York

For the Defendant: SAUL BIENENFELD, ESQ.
26 Broadway
New York, NY 10004

Court Reporter: Gene Rudolph
225 Cadman Plaza East
Brooklyn, New York
(718) 613-2538

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produced by computer-aided transcription.

1 THE COURT: Are we ready? Let's continue.

2 MR. BIENENFELD: Thank you, Your Honor.

3 Your Honor, I have one request; that is, that you
4 take judicial notice of the bond conditions in this case.

5 THE COURT: For what purpose?

6 MR. BIENENFELD: I would plan on using it in my
7 closing argument. The fact that the defendant was able to go
8 to Israel and come back while out on bail to face these
9 charges out of the jurisdiction, I plan on using that in
10 closing argument as further evidence of his character.

11 THE COURT: All right.

12 MR. BIENENFELD: Okay.

13 THE COURT: Any objection?

14 MR. SARRATT: No, Your Honor.

15 THE COURT: Okay. Do you have any further
16 witnesses?

17 MR. BIENENFELD: The defense rests.

18 THE COURT: Okay. Rebuttal case?

19 MR. BIENENFELD: One second.

20 MR. SARRATT: We have a matter that was, I believe,
21 a translation error from yesterday that we want to correct for
22 the record.

23 MR. BIENENFELD: Yes, Your Honor.

24 I believe that there was a -- there was -- my client
25 testified in Hebrew correctly. However, when it was

1 translated, it was translated that he was in charge of 130
2 soldiers, 130 troops or people. I don't remember.

3 THE COURT: I remember.

4 MR. BIENENFELD: You remember.

5 That's not correct. He was responsible for the
6 food, the technical equipment, the uniforms, the tents, the
7 ordinances for 130 people. He was the support service for 130
8 people, not that he was a commander of 130 people.

9 THE COURT: Okay.

10 MR. BIENENFELD: The interpreter did make a mistake
11 there, although he did testify correctly in Hebrew.

12 Agreed, Mr. Sarratt?

13 MR. SARRATT: Yes.

14 THE COURT: Okay. We will let the record reflect
15 that.

16 MR. BIENENFELD: Now we rest.

17 THE COURT: Okay. Rebuttal case?

18 MR. SARRATT: Your Honor, one witness.

19 The government calls Task Force Officer Derek
20 Martinez.

21 THE COURT: Officer Martinez, please raise your
22 right hand.

23 (The witness is duly sworn/affirmed by the Court.)

24 THE COURT: Please be seated.

25 Please state and spell your name for the record.

Martinez - direct - Sarratt

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1 THE WITNESS: My name is Derek Martinez, D E R E K,
2 M A R T I N E Z.

3 DIRECT EXAMINATION

4 BY MR. SARRATT:

5 Q Good morning, sir.

6 A Good morning.

7 Q Mr. Martinez, how are you employed?

8 A I'm currently employed as a federal air marshal.

9 Q What's your current assignment?

10 A Currently assigned as the Task Force Officer to the FBI.

11 Q Where with the FBI are you working?

12 A I am currently working at JFK Airport.

13 Q How long have you been assigned to the Task Force office
14 at JFK Airport with the FBI?

15 A I have been assigned there since January of 2010.

16 Q Were you working on March 27, 2011?

17 A I was originally not scheduled to work but I was called
18 in.

19 Q Why did you come to work?

20 A I was called in by Special Agent Janet Ambrisco to
21 respond to a Delta Airlines flight that had arrived at JFK.

22 Q So you did report to work then after you received that
23 call?

24 A That is correct, sir.

25 Q What did you do once you got to work?

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Martinez - direct - Sarratt

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1 A When I arrived, I arrived at terminal four, JFK Airport.
2 I met with Special Agent Janet Ambrisco, who then informed me
3 of the events that had transpired on Delta 269. Then we
4 conducted two interviews and that was it.

5 Q Did you have occasion then to interview the defendant on
6 this day?

7 A Yes.

8 Q Now, before you interviewed the defendant, did you speak
9 with any of the flight attendants from that flight?

10 A No, sir.

11 Q So you didn't speak with Christine Ferro?

12 A No, sir.

13 Q And you didn't speak with Aviel Silber?

14 A No, sir.

15 Q Had you reviewed any reports about statements made by the
16 flight attendants?

17 A No, sir.

18 Q Why were you interviewing the defendant?

19 A I -- rephrase the question.

20 Why was I interviewing him?

21 Q Did you understand him to be the subject of the
22 investigation?

23 A Yes, I did.

24 I was interviewing him to determine what exactly
25 happened on the aircraft.

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Martinez - direct - Sarratt

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1 Q Before you interviewed him, did you identify yourself as
2 law enforcement?

3 A Yes, I did.

4 Q Did you show him your credentials?

5 A Yes, I did.

6 Q Do your credentials say you are with the FBI?

7 A Yes, they do.

8 Q Did you ask the defendant if he was willing to speak to
9 you?

10 A Yes, I did.

11 Q About how long would you say this interview lasted?

12 A Approximately 15 minutes; ten or 15 minutes.

13 Q You asked him a number of questions?

14 A Yes.

15 Q Questions about who he was?

16 A Yes.

17 Q Did you ask him questions about who he was?

18 A Yes.

19 Q Did you ask him whether he was willing to speak to you
20 voluntarily?

21 A Yes.

22 Q What was his response?

23 A He was willing to speak.

24 Q I believe you asked -- I believe I was asking you a
25 moment ago, you asked him a number of questions.

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Martinez - direct - Sarratt

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1 Did you also ask him about his background?

2 A Can you be a little more specific in regards to his
3 background?

4 Q Did you ask him about his personal background, where he
5 lives?

6 A Yes, I did.

7 Q Were you asking this directly in English or were using an
8 interpreter?

9 A I was speaking in English through the use of a Hebrew
10 interpreter, CBP officer that was present.

11 Q Were his answers --

12 THE COURT: Try to slow down a little bit.

13 THE WITNESS: Okay.

14 CBP stands for Customs and Border Protection.

15 Q Through the use of the interpreter, were you able to
16 communicate with him then?

17 A Yes, I was able to communicate with him.

18 Q When you asked a question, were his answers generally
19 responsive?

20 A Yes.

21 Q Did you ask the defendant whether he touched the victim
22 in this case inappropriately?

23 A Yes.

24 Q If you remember, what question exactly did you ask him?

25 A I asked him whether or not he touched the female who

Martinez - direct - Sarratt

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1 alleged this in her private parts.

2 Q What was his response?

3 A He said it may have been possible if he was sleeping.

4 Q It may have been possible if he was sleeping?

5 A Yes, sir.

6 Q Did you view that answer as responsive to your question?

7 A No, I did not.

8 Q So what did you do next?

9 A I repeated the same question.

10 Q Again, what question did you ask him?

11 A I asked him whether or not he touched the female who
12 alleged the crime in her private parts, sir.

13 Q What was his response?

14 A His response was the same. He said that it may have been
15 possible if he was sleeping.

16 Q Did you view that answer as responsive to your question?

17 A No, I did not, sir.

18 THE INTERPRETER: I'm sorry. The interpret missed
19 the last response of the witness.

20 THE WITNESS: No, I did not.

21 Q So what did you do next?

22 A I then repeated the question a third time.

23 Q What question exactly did you ask?

24 A I asked him, did he touch the female who alleged the
25 crime in her private parts.

Martinez - direct - Sarratt

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1 Q What was his response that time?

2 A His response was the same.

3 Q What was that response?

4 A He stated that it may have been possible if he was
5 sleeping.

6 Q What did you do next?

7 A At that point I -- through the use of the Hebrew
8 interpreter, I told the defendant specifically, yes or no, did
9 you or did you not touch the female in her private parts.

10 Q What was his response?

11 A At that point he said no.

12 Q Officer Martinez, throughout the course of your interview
13 with the defendant, was there any other question that you had
14 to repeat?

15 A No, sir.

16 Q Did he give you a direct response to all of your other
17 questions?

18 A In -- besides the question that we've already discussed?
19 Yes, sir.

20 MR. SARRATT: Thank you, Officer Martinez.

21 (Continued on next page.)

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Martinez - cross - Bienenfeld

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1 CROSS-EXAMINATION

2 BY MR. BIENENFELD:

3 Q Good morning, officer.

4 A Good morning, sir.

5 Q You said you conducted two interviews.

6 Who was the other interview with?

7 A I shouldn't say conducted. I was present at two -- I
8 conducted one interview. I was present at another interview,
9 sir.

10 Q Who was the other interviewer?

11 A The defendant -- excuse me. The victim, Bat-El Lechtman.

12 Q Was that interview conducted in English?

13 A Yes, it was.

14 Q You heard her answers when she was being questioned?

15 A Yes, I did.

16 Q She was questioned about what happened in this case?

17 A Yes, sir.

18 Q She was questioned about how she was positioned while she
19 was seated in this case?

20 A I don't recall specifically if she was questioned on how
21 she was seated.

22 Q Do you remember that when she was answering the questions
23 that she said that she was covered with a blanket?

24 A I do remember her saying that she had a blanket, yes,
25 sir.

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Martinez - cross - Bienenfeld

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1 THE INTERPRETER: That she had a what?

2 THE WITNESS: Blanket covered, yes.

3 Q Do you remember her saying that she laid her hand down on
4 a tray table and covered her body and head with a blanket and
5 fell asleep?

6 A I don't remember her saying the tray table, sir.

7 THE INTERPRETER: The interpreter apologizes but
8 the words are being swallowed and they are too fast and I am
9 unable to get every word.

10 THE WITNESS: Okay.

11 I don't remember her stating that she put her head
12 on a tray table.

13 MR. BIENENFELD: Can I use the Elmo, Judge?

14 THE COURT: Please.

15 Q Are you familiar with what a 302 is?

16 A Yes, sir.

17 Q It is a report that summarizes what happens in a case?

18 A It is a report that summarizes an interview, is what it
19 does.

20 Q Did you have an occasion to review a 302 of the interview
21 conducted of Bat-El Lechtman?

22 A Yes, I did, sir.

23 Q Did it accurately reflect what happened during the
24 interview?

25 A To the best of my recollection, yes, sir.

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Martinez - cross - Bienenfeld

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1 Q Okay. Would it refresh your recollection whether the
2 defendant -- I'm sorry -- withdrawn.

3 Would it refresh your recollection whether Bat-El
4 Lechtman said she laid her head down on her tray table,
5 covered her body and head with a blanket and fell asleep if
6 you saw the 302?

7 A Would it refresh my recollection as to whether or not I
8 heard it, sir?

9 Q Yes.

10 A Is that your question?

11 Q Yes.

12 A It may.

13 Q Of course I am so technically -- thank you.

14 THE COURT: The witness can see it.

15 MR. BIENENFELD: Okay.

16 THE WITNESS: Yes.

17 Q In the third paragraph, the last sentence, do you see
18 that?

19 A I can't see the bottom of the third paragraph.

20 Q I'm sorry. The second paragraph.

21 A Okay.

22 Q In the last sentence.

23 A Yes, I can see the second paragraph -- the last sentence
24 in the second paragraph.

25 Q Does that refresh your recollection that during her

Martinez - cross - Bienenfeld

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1 interview she said she laid her head down on her tray table,
2 covered her body and head with a blanket and fell asleep?

3 A It's there, but it doesn't refresh my recollection.

4 Q So the 302 does not refresh your recollection as to the
5 events?

6 A I cannot sit here on the stand and say definitively that
7 I remember her saying she laid her head down on a table.

8 Q But you can sit here definitively on the stand and
9 remember saying you are --

10 THE INTERPRETER: Slow down.

11 Q You can sit here definitively and say you can remember
12 asking the defendant a question three times?

13 A That is correct, sir.

14 Actually, I was present at the interview of
15 Ms. Lechtman but I conducted the interview of the defendant.

16 Q Do you remember Ms. Lechtman saying that she awoke to
17 feel a hand rubbing and massaging her groin area?

18 A Yes, sir.

19 Q Do you remember she said that she jumped back and that
20 the defendant also jumped back and moved his hand from her
21 groin area?

22 A I do remember her saying that she woke up. I am not sure
23 if I remember her saying the word jumped but I do remember her
24 saying she woke up startled and the same thing for the
25 defendant.

Martinez - cross - Bienenfeld

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1 Q Do you remember using the word massaging her groin area?

2 A Yes.

3 Q Do you remember her using the word rubbing her groin
4 area?

5 A Yes, I do.

6 Q Do you remember her telling you that after this she
7 returned her head to the tray table and again covered herself
8 with a blanket?

9 A That -- the portion of the tray table I don't recall at
10 during the interview at this point.

11 Q Do you remember that she said that afterwards a hand
12 grabbed her breast and started massaging them?

13 A I do remember her saying that, that he grabbed her
14 breast, yes, sir.

15 Q And she said breasts in plural, correct?

16 A Breast, breasts. I really couldn't say.

17 Q If you look at the 302 and look at the third paragraph
18 and read that third paragraph to yourself.

19 Does that refresh your recollection that she said
20 hand grabbed her breasts, plural, and started massaging them
21 plural?

22 A It doesn't -- I can't say whether or not she said breast
23 or breasts.

24 Q Your name appears at the bottom of this 302, correct?

25 A That is correct, sir.

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Martinez - cross - Bienenfeld

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1 Q Why?

2 A Could you rephrase the question, please?

3 Q Why is your name on the report?

4 A I was present during the interview.

5 Q Who wrote your name on the report?

6 A Special Agent Janet Ambrisco.

7 Q When was the last time before today you saw this report?

8 A I saw it this morning.

9 Q Now, on direct examination you testified that you were
10 interviewing the defendant, correct?

11 A That is correct.

12 Q Was the purpose of that interview to get a confession?

13 A No, sir.

14 Q You asked him whether he touched the passenger three
15 times, right?

16 A I didn't ask him whether he touched the passenger three
17 times. I asked him if he touched the passenger three separate
18 times in regards to the question, not whether he touched her
19 physically three times.

20 Q You asked the defendant if he touched her
21 inappropriately, correct?

22 A That is correct.

23 Q And he answered you and you weren't satisfied with that
24 answer as responsive, correct?

25 A He didn't answer the question, sir.

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Martinez - cross - Bienenfeld

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1 Q He gave you an answer but you weren't satisfied with the
2 answer, correct?

3 A He gave me an answer, yes, sir.

4 Q So you asked him again and you thought it was
5 nonresponsive, correct?

6 A That is correct.

7 Q Then you asked him a third time and you thought his
8 answer was nonresponsive, correct?

9 A That is correct.

10 Q You really wanted a confession from him, didn't you?

11 A That is not correct.

12 Q By him saying that it may have been possible if he was
13 sleeping, that you didn't think that was a good enough
14 confession, correct?

15 A I didn't think it answered my question.

16 Q Asking somebody if they touched somebody
17 inappropriately -- what was your exact question?

18 A My exact question was, did he touch the female who
19 alleged in her private parts.

20 Q He answers you, it may have been possible if he was
21 sleeping?

22 A I've already answered that question. Can you go ahead
23 and --

24 Q You wanted a yes or no answer to that question, right?

25 A Excuse me, sir?

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Martinez - cross - Bienenfeld

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1 Q You wanted a yes or no answer?

2 A I wanted -- I asked him a question. The response would
3 have been yes or no.

4 Q Did you consider may have been possible if he was
5 sleeping as no?

6 A No, I did not.

7 Q Why not?

8 A Because he didn't say no.

9 Q So you asked him three times because you really wanted a
10 confession, right?

11 A I asked him three times because he didn't answer the
12 question.

13 Q You speak Hebrew?

14 A No, I do not, sir.

15 Q Do you understand Hebrew?

16 A No, I do not, sir.

17 Q Have you ever been around Hebrew speaking people?

18 A Not that I can recall.

19 Q You had to be 100 percent reliant on the interpreter at
20 this interview, correct?

21 A That is correct.

22 Q What is the Investigative Data Warehouse?

23 A Your Honor, may I confer with my partner? I am not an
24 FBI employee. I don't know if I can discuss FBI databases.
25 Investigative Data Warehouse is an FBI database.

Martinez - cross - Bienenfeld

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1 Q Did you run a check in that database of Gavriel Bidany?

2 A I did not personally run the check, no, sir.

3 Q Did you ask somebody to run a check?

4 A A check was conducted.

5 Q What were the results?

6 A I believe they were negative.

7 Q How many records are in the database?

8 A I don't know. I don't control the database. I have no
9 idea.

10 Q Did they ever teach you about this in FBI school?

11 A I didn't attend FBI school, sir.

12 Q Did they ever teach this in the government agencies that
13 you have attended?

14 A I had taken a course in regards to the database, yes,
15 sir.

16 Q Do you know that there are over 500 million records in
17 the database?

18 MR. SARRATT: Your Honor, I am not sure of the
19 relevance of this.

20 THE COURT: Neither am I.

21 But go ahead.

22 A I am not aware, no, sir.

23 Q Did you fill out another 302 with a description of what
24 Gavriel Bidany looked like?

25 A I am not sure if I actually typed that 302 but I am aware

Martinez - cross - Bienenfeld

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1 of the 302 you are referencing.

2 Q It is a description of his weight, his hair, correct?

3 A Yes, sir.

4 Q Okay. Then there is an indication there of facial hair,
5 correct?

6 A I believe so, yes, sir.

7 Q Do you know what you wrote?

8 A Yes.

9 Q What did you write?

10 A I can't even claim I wrote it. I know it is on the form.

11 Q What's on the form?

12 A It says none, sir.

13 Q Does Gavriel Bidany have facial hair?

14 A Yes, sir.

15 Q The form is wrong?

16 A There is a typographical error, yes, sir.

17 Q The form is wrong?

18 A Yes, sir.

19 MR. BIENENFELD: Thank you.

20 THE WITNESS: No problem, sir.

21 MR. SARRATT: Briefly, Your Honor.

22 (Continued on next page.)

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Martinez - redirect - Sarratt

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1 REDIRECT EXAMINATION

2 BY MR. SARRATT:

3 Q Officer Martinez, do you recall me asking you questions
4 on direct examination about an interview you conducted with
5 the defendant?

6 A Yes, sir.

7 Q Was the defendant under arrest at that point?

8 A No, sir.

9 Q At that point did you tell the defendant he was under
10 arrest?

11 A No, sir.

12 Q Did you yourself know whether the defendant would be
13 arrested or not?

14 A No, sir.

15 Q Is it often the case that in airline assault cases the
16 defendant does not get arrested?

17 MR. BIENENFELD: Objection.

18 THE COURT: Sustained.

19 Q Have you participated in investigations involving
20 incidents on airlines in which a defendant -- in which a
21 subject was not arrested?

22 MR. BIENENFELD: Objection.

23 THE COURT: Sustained.

24 Q Officer Martinez, are you aware of who makes the decision
25 about whether a defendant in this circumstance will be

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Martinez - redirect - Sarratt

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1 arrested?

2 MR. BIENENFELD: Objection.

3 THE COURT: Overruled.

4 A Repeat the question, sir.

5 Q Are you aware of who makes the decision in this
6 circumstance of whether or not a subject will be arrested?

7 A Yes, I am aware.

8 Q Who makes that decision?

9 A The US Attorney's Office.

10 Q When you interviewed the defendant, where were you
11 exactly?

12 A I was inside terminal four. I can't recall the exact
13 gate. I was inside the jet bridge, the walkway I guess you
14 can say, coming off the aircraft.

15 Q At that point are you aware of whether the defendant had
16 been admitted into the United States or not?

17 A At that point he had not been admitted into the United
18 States.

19 Q So he was still in the international area of the
20 terminal, is that right?

21 A That is correct.

22 Q Officer Martinez, did you have authority to arrest the
23 defendant there in the international area of the terminal?

24 MR. BIENENFELD: Objection.

25 THE COURT: Overruled.

Martinez - recross - Bienenfeld

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1 A At that present location, sir?

2 Q Yes.

3 A No.

4 Q Officer Martinez, you did later arrest the defendant, is
5 that right?

6 A That is correct.

7 Q About how long later do you think that was?

8 A After I conducted the interview?

9 Q Yes.

10 A Approximately say about two-and-a-half hours later.

11 MR. SARRATT: Thank you, Officer Martinez.

12 I have no further questions.

13 MR. BIENENFELD: May I confer with my client for one
14 second?

15 THE COURT: Go ahead.

16 (Pause.)

17 RECROSS-EXAMINATION

18 BY MR. BIENENFELD:

19 Q Officer Martinez, you testified that you used an
20 interpreter from CBP, correct?

21 A Yes, sir.

22 Q Did you also use Aviel Silber as an interpreter as well?

23 A No, sir.

24 Q You never interviewed the defendant in front of Aviel
25 Silber?

Martinez - redirect - Sarratt

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1 A No, sir.

2 MR. BIENENFELD: Nothing further.

3 MR. SARRATT: One or two, maybe; probably two.

4 REDIRECT EXAMINATION

5 BY MR. SARRATT.

6 Q Officer Martinez, are you aware of anyone else who was a
7 law enforcement officer that interviewed the defendant with
8 Aviel Silber serving as an interpreter?

9 A No, sir.

10 MR. SARRATT: Okay. No further questions.

11 Thank you.

12 THE COURT: Thank you. You are excused.

13 (Witness excused.)

14 THE COURT: Okay. Anything else?

15 MR. SARRATT: No, Your Honor.

16 The government rests.

17 THE COURT: All right.

18 MR. BIENENFELD: The defense rests, Your Honor.

19 THE COURT: Okay. Let's go to closings.

20 MR. SARRATT: Your Honor, may it please the Court, I
21 told you at the outset of this case that the government would
22 prove the defendant brazenly assaulted a young woman aboard an
23 aircraft and, I submit, that is exactly what we have proved.

24 At least twice the defendant reached over from
25 underneath his blanket and touched Ms. Lechtman, and it wasn't

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1 just touching. The defendant was actively massaging
2 Ms. Lechtman's groin and grabbing her breast. Make no mistake
3 about it, he was doing this intentionally and for his own
4 gratification.

5 You heard Ms. Lechtman testify that over the course
6 of the flight the defendant was consistently encroaching on
7 her seat. Being aware that the defendant's religious beliefs
8 prevented contact with women, Ms. Lechtman tried her best to
9 be respectful of the defendant and avoid contact with him.

10 At one point, Your Honor, you heard that the
11 defendant, appearing to sleep, had his hand resting fully on
12 Ms. Lechtman's seat. Ms. Lechtman testified that she tried to
13 use a pillow to create a buffer between her thigh and the
14 defendant and that she tried to nudge his hand away. Over
15 time, she used more and more force, trying to use her pillow
16 to get him to move his hand.

17 But she didn't jump to any conclusion here. Even
18 when the defendant had his hand resting on her seat and he was
19 rubbing her leg with his leg, she didn't jump to a conclusion.

20 Ms. Lechtman tried to go to sleep as best she could,
21 struggling to get comfortable in the little space that was
22 left for her in her seat. And, Your Honor, after she had
23 finally fallen asleep with her head resting on the tray table
24 in front of her, she awoke to realize that the defendant's
25 hand was between her legs. Your Honor, you heard clear

Summation - Sarratt

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1 testimony that the defendant was not keeping his hand still,
2 as would someone who was asleep. He was reaching over and
3 actively massaging her groin area.

4 As she came to and realized what was going on, she
5 was startled and jumped up from underneath her blankets
6 underneath which she had been sleeping, and when she did so
7 the defendant also startled. He quickly pulled his hand back.

8 You heard that the defendant then appeared to be
9 pretending to go back to sleep, and Ms. Lechtman actually gave
10 a poignant example here. She said the defendant looked like
11 her seven-year old brother who has been caught playing with
12 toys when he is supposed to be asleep. And he was pretending
13 quickly to go back to sleep; it was clear to her that this was
14 an act.

15 But what happened next, I submit, Your Honor, was
16 truly shocking. Ms. Lechtman told you that she wanted to see
17 if the defendant would make another move. She wanted to be
18 absolutely sure that she was right about what the defendant
19 was doing. She covered herself back with the blanket and
20 seconds to a minute or two later, the defendant reached toward
21 Ms. Lechtman again, seconds to a minute or two after he had
22 been startled awake and jerked his hand back.

23 You heard clear testimony that he put his hand under
24 her blanket and started feeling and massaging her breasts and
25 again he was not just touching but massaging.

Summation - Sarratt

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1 Ms. Lechtman took off her blanket and she saw the
2 defendant's eyes looking at her as he grabbed her. He was
3 watching what he was doing. Ms. Lechtman's testimony was
4 absolutely clear on that point. He was watching.

5 You heard then that Ms. Lechtman immediately
6 confronted the defendant. She said, what are you doing? You
7 have been touching me.

8 Your Honor, Ms. Lechtman's recollection of what the
9 defendant said when she confronted him was clear. It is a
10 mistake. I'm asleep.

11 He didn't say, what are you talking about. He
12 didn't say, what do you mean. He didn't say anything like
13 that. He said, it's a mistake. He knew he was touching her
14 and he said it's a mistake and he came immediately out with a
15 preplanned story for how he was going to try to play this
16 off -- I am asleep.

17 Your Honor, that is patently absurd. Even the
18 defendant himself admitted that his wife of 24 years has never
19 complained that he hits her or anything of the kind in his
20 sleep.

21 Ms. Lechtman then did exactly what she should have
22 done. She went straight to the flight crew, to explain what
23 had happened to her, and to get as far away from this man as
24 she could.

25 Your Honor, Christine Ferro, flight attendant,

1 explained exactly what Ms. Lechtman's demeanor was like at
2 that moment. You heard that immediately after this happened,
3 she told Christine Ferro exactly what she told this Court,
4 that the defendant had been touching her all over, that he had
5 touched her between her legs and on her breasts. Christine
6 Ferro testified that Ms. Lechtman appeared to be in a state of
7 shock and that she was plainly upset.

8 That is entirely consistent, Your Honor, with how
9 common sense would tell you a person who has just been
10 assaulted in this way would behave.

11 What Ms. Lechtman told Christine Ferro about this
12 assault was entirely consistent with what she told Your Honor
13 yesterday.

14 Your Honor also heard from another flight attendant,
15 Aviel Silber, who came back to the back of the aircraft to
16 inform the defendant that the police would be meeting the
17 aircraft. I submit, it is significant, Your Honor, that the
18 defendant did not show any outrage at all at that moment,
19 Mr. Silber testified. Instead of categorically denying that
20 he had done this, he said, it can't be. I have eleven
21 children. I'm 48 years old. It was a mistake. But Silber
22 testified that the defendant repeatedly acknowledged that he
23 may have touched her during his sleep.

24 Aviel Silber's second conversation with the
25 defendant, I submit, was even more revealing. The defendant

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1 asked if he could speak to the victim so that he could try to
2 sort this out and so that he could apologize. He said, I
3 don't have time for such things.

4 We submit, Your Honor, that is exactly how common
5 sense tells you a guilty person would behave in trying to
6 smooth this over and dissuade Ms. Lechtman from taking this
7 matter to the authorities. He thought he could just talk her
8 out of this if he apologized.

9 But, Your Honor, the fact is here, he messed with
10 the wrong girl. She may look young, as you saw her in court.
11 She may be about five-foot tall and probably doesn't weigh
12 100 pounds. But he messed with the wrong girl. She told you
13 how when he did this to her she felt really stupid and naive.
14 But she wasn't going to let it go. She wasn't going to let
15 him get away with this. She was going to stand up to this man
16 and that took guts.

17 This is something, Your Honor, that no young woman
18 would want to go through. But as Your Honor heard,
19 Ms. Lechtman is a woman of courage. Your Honor heard how she
20 elected to stay in the army for three extra years, how she
21 commands 15 other soldiers, how she served in combat areas.
22 Your Honor, we submit, she has plainly established herself as
23 a person worthy of trust in the most serious matters.

24 You heard, Your Honor, how she had to go to her
25 commanding officers in the military to explain to them what

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1 had happened to her in this case -- how embarrassing must that
2 have been -- and to ask for permission to use her vacation to
3 fly back halfway around the world to be here for this trial
4 yesterday and today.

5 Is there any way she would do that if she thought
6 this was some sort of mistake? No, Your Honor, no.

7 All the other testimony you heard in this case, Your
8 Honor, from the government's witnesses, is precisely
9 consistent with what Ms. Lechtman told you, from Christine
10 Ferro's description of Ms. Lechtman's demeanor to Aviel
11 Silber's description of the defendant's demeanor when he had
12 been caught and what he said. He was withdrawn into his
13 thoughts, looking for ways to smooth this over.

14 Now let me just say a few words about the
15 credibility of the witnesses here and, in particular, about
16 the testimony of the defendant.

17 Your Honor heard the testimony on cross-examination
18 and time after time the defendant was unable to answer even
19 simple questions with a straight answer. Did you claim to
20 make money in the United States while you were asking for
21 bail? Do you get paid for your counseling services? How do
22 you support yourself? Are you concerned if you are convicted
23 you won't be allowed to enter the United States? Did you ask
24 to have your seat reassigned once you got on the flight?
25 Could you see through the blanket?

1 The defendant couldn't give a straight answer to any
2 of those straight questions.

3 The defendant also asked multiple times to have
4 questions repeated. You never thought you might be able to
5 trade seats with someone? Do you normally sleep during the
6 day? That's a perfectly clear question, do you normally sleep
7 during the day.

8 Yet, Your Honor, the defendant had no trouble
9 answering questions posed by his own lawyer.

10 Your Honor heard this morning from Task Force
11 Officer Martinez that the defendant did the same thing when he
12 was interviewed by the FBI after the flight landed. He
13 answered all the questions. He gave straight answers to all
14 the questions. Except for the one that married.

15 You heard, Your Honor, that three times the
16 defendant said that it was possible he touched her while he
17 was sleeping. What's interesting about that, Your Honor, is
18 that two other witnesses in this case heard the defendant say
19 almost exactly the same thing. Ms. Lechtman told you that the
20 defendant said, it's a mistake. I am asleep. And Aviel
21 Silber told you that the defendant said if he touched her
22 maybe it happened while I was asleep.

23 Yet, remarkably, Your Honor, the defendant himself
24 denies that he ever said that. He would have this Court to
25 believe that all three of those witnesses just independently

1 made up something he said. And yet, they all three, without
2 speaking to each other, came up with exactly the same
3 statement.

4 Now that we are in court, the defendant claims it
5 was Ms. Lechtman who asked him, are you telling me this is a
6 mistake. But Mr. Silber, a native Hebrew speaker, didn't say
7 anything like that. And Mr. Silber, Your Honor, has no
8 interest in this case. He is a flight attendant. He has no
9 bias whatsoever. He has no connection to the defendant or to
10 Ms. Lechtman.

11 The defendant's story here, Your Honor, just isn't
12 credible. Indeed, it was notable that the defendant denied
13 ever even talking to Mr. Silber in the back of the airplane.

14 Yet, Your Honor heard Mr. Silber's testimony. His
15 recall was precise. He told you that the defendant mentioned
16 that he has eleven kids -- true -- that he was 48 years old.

17 Now, Mr. Bidany admitted yesterday on
18 cross-examination that he told Mr. Silber that he was 48 years
19 old, even though by my count Mr. Bidany is 47. He's given a
20 birth date in 1963, August.

21 That was remarkable for two reasons. First,
22 Mr. Silber remembered the details exactly right, eleven kids
23 and he told him 48 years old. Second, why did the defendant
24 give him the wrong age? Was he trying to seem older than he
25 is, like he was the kind of person who wouldn't do this?

1 The defendant also made a comment about how when
2 this happened he couldn't just sit there without taking any
3 action. Yet, Mr. Silber's description of the defendant's
4 demeanor as he approached him there in the back of the plane
5 was again very clear. He seemed absorbed in his own thoughts.
6 He was just standing there in the back of the plane.

7 Your Honor, the defendant's story about sleeping
8 doesn't make any sense either. We submit, Your Honor, this is
9 very much an evolving story.

10 The defendant first stated on direct examination
11 that he sleeps only three to four hours a night. On
12 cross-examination he admitted that he operated and functioned
13 normally on that amount of sleep. He said he eventually
14 didn't normally sleep during the day.

15 Yet, suddenly on redirect he remembered that he had
16 missed his normal nap before the flight that evening, and that
17 he had stayed up, quote, half the night on Friday night, the
18 night before.

19 But, Your Honor, this is a person who says he only
20 sleeps three to four hours a night. If that's true, he's up
21 half the night every night. I guess he's trying to explain
22 how he fell into such a deep sleep twice on this flight or
23 maybe why his sleep could have been so deep that he didn't
24 notice he was touching Ms. Lechtman.

25 Yet, Your Honor, in the 24 years he has been

1 married, as I said, his wife has never told him anything about
2 him groping around in his sleep.

3 Again, Your Honor, the defendant's story just
4 doesn't make sense.

5 The defendant also gave this very strange answer
6 about him only doing a quarter turn in his seat toward
7 Ms. Lechtman. He said that he was being careful because he
8 was afraid of making a mistake.

9 Does that kind of precision sound believable from a
10 guy who claims that he entered into two periods of deep sleep
11 on this flight? Was he sleeping deeply or was he measuring
12 his turning radius?

13 The defendant's testimony again, Your Honor, it
14 simply doesn't make sense.

15 But, I submit, Your Honor, it is as to the crucial
16 moments in this case that the defendant's testimony really
17 falls apart. The defendant says that he awoke to Ms. Lechtman
18 asking him, is it a mistake? Are you telling me this was a
19 mistake?

20 Yet, who was Ms. Lechtman supposed to be responding
21 to? Under the defendant's version of events, he hadn't even
22 said anything up to this point. Are we supposed to believe,
23 Your Honor, that he was not only assaulting Ms. Lechtman in
24 his sleep but that he was talking to her as well?

25 In stark contrast to that, Your Honor, what

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1 Ms. Lechtman told you on the witness stand was crystal clear.
2 She answered the questions that were put to her by both sides
3 directly. The defendant didn't just put his hands on her. He
4 was massaging her groin. And then grabbing her breasts, he
5 was trying to take advantage of her at a time when he thought
6 she was asleep. When he reached over to grab her breasts, it
7 was only a few seconds after he had just jerked his hand back
8 and startled when she woke.

9 Your Honor, the most powerful testimony of all is
10 that he was watching. He wasn't asleep at all. He was
11 watching, watching her while he did this.

12 THE INTERPRETER: What was the last word?

13 MR. SARRATT: Watching her as he did this.

14 As I said at the beginning of the case, Your Honor,
15 the evidence in this case leaves no doubt that what
16 Ms. Lechtman says is true -- the defendant knowingly and
17 intentionally assaulted her on that flight from Tel Aviv.

18 I ask the Court to hold the defendant accountable
19 for his actions.

20 Thank you.

21 MR. BIENENFELD: Good morning, Your Honor.

22 Upon graduating law school, I interviewed in many
23 firms and government jobs, including Legal Aid. I remember
24 that on my final interview with the then head of Legal Aid
25 Robert Baum, Mr. Baum asked me the following question:

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1 Who do you think is the hardest client to represent?

2 I answered him, the innocent one.

3 He looked puzzled at me and said, what are you
4 talking about? I meant a murderer, a rapist, a child
5 molester -- which one of those do you think is the hardest?

6 Again I said, the innocent client and explained that
7 in my opinion if you defend anyone who you believe is guilty
8 and win an acquittal, you walk out of the courtroom feeling
9 proud and happy. You served justice. You defended the
10 constitution. If you defend a guilty person and lose, well,
11 you walk out of the courtroom sad but in the back of your mind
12 you think to yourself, well, at least justice was served.

13 However, when you defend a person you truly believe
14 is innocent, you stop to sleep at night. You lay awake
15 thinking about the awesome responsibility of someone's
16 potential freedom and liberty is in your hands. You work 24/7
17 on that case because losing is just not an option. That, I
18 told Mr. Baum, is the hardest client to represent.

19 Your Honor, today I have the privilege as well as
20 the awesome responsibility to represent a man who I suggest
21 that you can conclude is that innocent man, a man who is well
22 respected in his community, whose mission in life is to help
23 others, a charitable man who can either be found studying in
24 school, working at a soup kitchen as a volunteer or meeting
25 other individuals who seek his guidance and who respect him.

1 You heard two versions of what happened in this
2 case, Bat-El Lechtman's version and the defendant, Rabbi
3 Gavriel Bidany's version. Rabbi Bidany was subject to
4 cross-examination by the US Attorney and nothing in that
5 cross-examination can possibly lead you to believe that he was
6 anything but truthful in his testimony.

7 There are no independent witnesses in this case.
8 There are no other witnesses, passengers or flight attendants
9 who came here and testified that they saw the defendant
10 assault Bat-El Lechtman man.

11 I submit to you that in a case where both the
12 defendant and the alleged victim are credible, and you are not
13 sure which one to believe, you have per se reasonable doubt.
14 Here we have doubt. Do we believe the events as they were
15 told by Ms. Lechtman or as told by Rabbi Bidany? The
16 uncertainty of the complaining witness herself during the
17 incident and during her testimony certainly indicates that
18 there is reason to doubt her.

19 You may recall that Ms. Lechtman was not even sure
20 if the defendant had what is called side curls or in Hebrew
21 peyot. She told us that when describing the defendant's
22 appearance that he had side curls but was not sure. Even
23 based on Ms. Lechtman's testimony, she herself is not certain
24 if Rabbi Bidany is sleeping or not when she is touched. The
25 first time it happens and she claims that she was touched in

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1 the groin, she has doubts as to whether he is awake or not, so
2 much doubt that after the first alleged touching, she does not
3 scream, does not push her call button, does not elbow the
4 person next to her to repel him, does not get out of her seat
5 to go to the bathroom, does not attempt to wake the man
6 sitting next to her. She does nothing. This is a woman
7 trained by the Israeli Defense Forces to take care of herself,
8 to defend herself. She is in a combat unit. She is not a
9 secretary in the army. She has self-defense training -- and
10 she does not act at all.

11 Reasonable doubt, he-said-she-said.

12 Let's examine what she said.

13 She was unsure when this occurred. Yet, the
14 complaint clearly states it occurred one-and-a-half hours into
15 the flight. Clearly, on an 11-hour flight, that was not the
16 testimony as to when this occurred. She is unsure. She knows
17 she read a book, watched a movie and ate before this. I
18 submit --

19 MR. SARRATT: Your Honor, I deeply apologize for
20 objecting, but I want to reiterate the objection from
21 yesterday, which Your Honor sustained. That is an inaccurate
22 statement of what the complaint says in this case. It does
23 not say that the incident happened about an hour-and-a-half
24 into the flight.

25 Thank you.

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1 I apologize.

2 MR. BIENENFELD: I submit to you, that the time it
3 takes to watch the movie alone is more than an
4 hour-and-a-half.

5 She claims she was touched twice, and on the second
6 touching she swore under oath she was seated straight up with
7 a blanket covering her head. Yet, she told the FBI that she
8 had returned her head to the tray table and again covered
9 herself with a blanket. The sworn statement that she signed
10 is silent about how she was seated at this time.

11 Her position is crucial evidence in this case
12 because it helps in painting a picture of how he was allegedly
13 able to touch her while keeping his hands under the blanket,
14 over or under the armrest -- which one is it. Because one
15 thing is for certain, the armrest was down -- through the
16 pillow that she claims she placed as a barrier. Then she
17 claims she placed the pillow between herself and Rabbi Bidany
18 and then once again under the tray table and under her blanket
19 and then on her breast. It makes a big difference if her head
20 is down on the tray table or if she is sitting straight back,
21 as she testified in court.

22 I submit to you, that if you are trying to catch a
23 person touching you, as she claims she was doing, you would
24 remember exactly what position you were in. You would set the
25 trap, so to speak. Here, we have conflicting testimony as to

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1 how she was seated.

2 Her sworn statement says that she yelled at him.
3 When she testified, she said I didn't yell at him. I talked
4 sternly to him. The FBI tells us that she neither yelled nor
5 talked sternly, but rather -- withdrawn.

6 Which one is it, Your Honor? Is it yelling or
7 talked sternly?

8 She swore here in this courtroom that after the
9 incident she climbed over Rabbi Bidany and went to the galley.

10 Her sworn statement said, he then got up and moved
11 to the rear of the plane.

12 The flight attendant said that when she was speaking
13 with Ms. Lechtman, Ms. Lechtman told her that the man seated
14 next to her ran to the back of the plane.

15 If she knew that -- well, she obviously didn't climb
16 over him. He got up. It's conflicting.

17 While we are on the subject of Ms. Ferro's
18 testimony, she said that she saw Ms. Lechtman run to the
19 galley. She also said, when I questioned her about the
20 galley, that the curtain to the galley was drawn and she could
21 not see outside the galley. If that's the case, she could
22 never have seen Ms. Lechtman run to the galley. Yet, she
23 swore to that fact under oath.

24 Your Honor, this incident allegedly occurred
25 March 27, 2011. Yesterday, when she testified, only 38 days

1 have passed since this alleged incident. She had an
2 opportunity to review her testimony with the Assistant
3 U.S. Attorney the day before, to review it by email with the
4 FBI, and still she could not get her story straight. How many
5 times did she testify? I don't remember? I submit, that she
6 said this more than ten times in her testimony. Contrast that
7 with the defendant's testimony who only said I don't remember
8 once.

9 The government will claim that she couldn't
10 understand the sworn statement before she signed it and that's
11 why there are so many contradictions between the sworn
12 statement and what she testified to yesterday. Your Honor,
13 she came to this country as a representative of the State of
14 Israel. She was here to lecture to the Israeli bonds
15 organization in English. You heard her testify. Her English
16 is perfect. She cannot claim that I didn't understand what I
17 was signing before I signed it.

18 I submit to you that as a high ranking officer in
19 the Israeli Army in charge of so many soldiers, she is called
20 upon many times to sign documents. I guarantee you that she
21 reads them carefully before signing them. She had an
22 opportunity to read the sworn statement before signing it.
23 She had an opportunity to correct any mistakes in it. She
24 knew the importance of that document. Yet, she never
25 corrected it. Her testimony was one way and the sworn

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1 statement went another way -- reasonable doubt.

2 Let's exam the absurdity of allegations here.

3 She claims the two of them are seated next to each
4 other and the armrest is down. There is a pillow between the
5 two of them. Her tray table is down and they are both covered
6 with blankets. Certainly, both of their heads are covered
7 with blankets. She then claims that she felt someone grabbing
8 her groin. Interesting to note, that her sworn statement says
9 grabbing. The complaint says groping and her testimony
10 yesterday was massaging or touching in a circular manner. So
11 we don't know what she is claiming.

12 I submit to you that it is impossible for
13 Rabbi Bidany with his head covered by a blanket, with his back
14 against the seat, to move his hand undetected from under his
15 blanket to under her blanket and to get his hand between her
16 legs while seated on the plane with a blanket over his head
17 and her head on the tray table and a pillow blocking his
18 access. The action itself is absurd. Remember, the armrest
19 is down. There is a pillow protecting her side and he is
20 supposedly able to get over or under the armrest, through the
21 pillow from under his blanket, to under her blanket, under the
22 tray table and going directly to her groin without disturbing
23 any of her personal space nor any part of her physical
24 body -- highly unlikely. And, by the way, all of this and
25 no one sees it? Not the people seated next to them, no one

1 standing at or near the galley on a crowded flight?

2 In any event, she claims she feels this, and what
3 does this trained combat soldier do, this soldier with the
4 Israeli Defense Forces, hand-to-hand combat training?

5 Nothing, absolutely nothing. She does not confront the
6 person, whether she believes it's accidental or not, whether
7 she thinks he is sleeping or not. If it happened the normal
8 reaction would be to do something, to make sure the person
9 doing it will stop it. She does not use her call button to
10 summons help. She does not get out of her seat in an effort
11 to both awaken him or get away from him. Instead, she would
12 have you believe that she pretended to be sleeping in order to
13 catch the person doing it again.

14 So, again, here is another contradiction in her
15 testimony. Thirty-eight days after the alleged incident, she
16 can't remember what position she was seated in when this
17 second alleged touching took place. Was her head on the tray
18 table and she was hunched over or was she seated straight up
19 as she told Your Honor?

20 In any event, now she is very awake. She is waiting
21 for something to happen. She says she felt her blanket move
22 and she did nothing. She felt and saw a hand move towards her
23 breast and did nothing, felt a hand on her breast and did
24 nothing, and then after this hand massaged her breast, that's
25 when she claims she sternly spoke to Rabbi Bidany, not yelled,

1 as her sworn statement says, but, rather, spoke sternly and
2 asked, what are you doing.

3 Again, the whole scenario just does not seem
4 logical. These seats were only steps away from the galley.
5 Passengers are always going to the galleys to get snacks and
6 drinks. The flight attendants hang out in the galleys. We
7 know that Christine Ferro was in the galley at this time.
8 It's not logical to believe that a person would do this with
9 potential witnesses only steps away on a full flight,
10 especially, especially, Your Honor, with his head covered. If
11 you were to do this, at least be able to see if anyone is
12 watching you. But the credible testimony here shows us that
13 Rabbi Bidany's head was covered. It just could not have
14 occurred in that manner.

15 The government desperately wants you to believe that
16 Rabbi Bidany made some kind of admission in this case. The
17 best that they could have come up with was they claim he said
18 it is possible I may have touched the woman while I was
19 sleeping. He testified that he did not say that. But,
20 rather, I didn't touch the woman. I was sleeping.

21 This is a perfect example of a game of telephone or
22 lost in translation. The Court will recall when the Assistant
23 US Attorney asked if the blanket was translucent and
24 Rabbi Bidany said he didn't try to look through the blanket,
25 the reason he answered that way, and luckily for Rabbi Bidany

1 he has a defense attorney that understands Hebrew and knows
2 that the interpret used a word that also means see through,
3 was because Rabbi Bidany thought he was being asked if he
4 could physically see through the blanket, while in reality he
5 was asked if the blanket was translucent or, as the definition
6 is, allowing light, but not detailed images, to pass through.

7 I submit, that this is a perfect example of what
8 happened on the flight and at the airport. Rabbi Bidany said
9 it's not possible that he touched the woman while I was
10 sleeping, and it got translated to, it was possible that I may
11 have touched the woman while I was sleeping. Words in
12 different languages have varying meanings.

13 Even Ms. Lechtman when describing Rabbi Bidany
14 referred to him as conservative. I submit to you that in
15 New York no conservative rabbi would appear as Rabbi Bidany
16 does. In New York the terms we use are reformed,
17 conservative, orthodox, ultra orthodox. Her use of the word
18 conservative is simply a faulty translation of the Hebrew word
19 she was searching for.

20 We even, just today, had to correct the record
21 because there was an indication that the translator here in
22 this case made a mistake when she said that he was in charge
23 of 150 people. It wasn't that he was in charge of 150 people.
24 He was in charge of the provisions for 150 people. The
25 translator made a mistake.

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1 I submit to you that when Rabbi Bidany gave a
2 statement to the FBI, that either the interpreter got it wrong
3 when he interpreted Rabbi Bidany's words or there were two
4 meanings to the words used by Rabbi Bidany and the interpreter
5 chose the meaning he knew the FBI would want to hear.

6 There was testimony from the Delta flight attendant
7 Silber that Rabbi Bidany did not appear nervous. He looked
8 like he was composed and thoughtful. There is a simple
9 explanation for that. Innocent people aren't nervous. They
10 have no reason to be.

11 Although there is contradicting testimony as to who
12 approached whom, when either Silber went to Rabbi Bidany or
13 Rabbi Bidany went to Silber, one thing is clear. Silber
14 testified that Rabbi Bidany never said I touched her by
15 mistake. He never said he touched her. If that is so, why
16 would Bidany want to apologize for touching? Rabbi Bidany
17 wanted to find out what she was claiming, what was her
18 problem. He wanted to speak with her and see what she would
19 say. Yet, Silber took the law into his own hands and forbade
20 that action. Rabbi Bidany did not understand what happened
21 here and wanted to talk to Bat-El Lechtman but Silber made up
22 his own rules and that conversation never took place.

23 The government will say, and has said, why would she
24 come to America, take vacation time away from the Army to
25 falsely accuse my client? It is simple. Her lawyers in

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1 Israel told her that she needed a conviction in this case in
2 order to pursue a civil action in Israel.

3 These events as told by Bat-El Lechtman never
4 happened.

5 Let's examine my client's testimony now. He was
6 positive of the events that occurred only 38 days before his
7 testimony. He told this Court that he was on the flight and
8 he was very tired and after eating he went to sleep. He fell
9 into a deep sleep and awoke to go to the bathroom. He
10 explained that it is a Jewish ritual that upon waking the
11 first thing you do is wash your hands. He walked around a
12 little, and here is the only time he said I don't remember
13 when the Assistant asked how long did you walk around for. He
14 then returned to his seat and fell asleep again.

15 The next thing he knows, the woman seated next to
16 him is saying, you want to tell me that's a mistake? He has
17 no idea what is going on. He uncovers his head and asks her,
18 what mistake are you talking about? She says, you touched me
19 and I am going to tell a flight attendant. He gets up, let's
20 her out and now, since he had just been sleeping and it's a
21 Jewish requirement to wash your hands, he goes to the back of
22 the plane to wash them as well as to use the restroom.

23 He never touched her. He never said he touched her
24 by mistake. It just didn't happen.

25 Examine who my client is. He is a well respected,

1 honored and revered rabbi with a wife and eleven children, a
2 decorated war veteran, who is twice the age of the alleged
3 victim. He studies Torah, volunteers in a soup kitchen, lives
4 his life only to help other people and he does not ever expect
5 payment for his help. Those that want to pay do, those that
6 can't or won't don't. It's that simple.

7 Rabbi Bidany is a deeply religious man who lives his
8 life in accordance with the highest Jewish ethics, which
9 forbid casual contacts between man and woman. He testified
10 that he maintains certain rules when he is around women. He
11 is so careful about not touching women that he never let's
12 even a young girl touch him. When he is in a room with a
13 woman he keeps the door open. It is not logical that a person
14 who has lived this kind of life forever would abandon his
15 principles and behave in such a deviant manner as he stands
16 accused.

17 He was extensively cross-examined, and I submit to
18 you that if there was any aspect of his life in the past that
19 was even in question or was remotely related to the acts that
20 he is accused of here, it would have been examined during
21 cross-examination. The fact that nothing untoward was even
22 suggested proves to this Court that Rabbi Bidany is an honest
23 and forthright person.

24 You also heard from Erez Yechiel, a well-known and
25 respected member of Rabbi Bidany's community, as well as

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1 Sigalit Dor, his cousin, who was a member of his community,
2 that the defendant has a sterling reputation as an honest man.
3 They said that he is well respected, hard working, modest,
4 principled, charitable, and beloved. Likewise, he is well
5 respected here in the United States as well. His travel is
6 sponsored by Malki Fuchs. His American friends put up his
7 surety bonds, both in real estate as well as cash, and the
8 courtroom is filled with his supporters. A person with those
9 characteristics does not assault random strangers in any
10 nature, let alone a sexual one.

11 On the subject of honesty and credibility and being
12 an honorable person, let's examine the defendant's actions in
13 this very case while out on bail. Judge Orenstein graciously
14 allowed the defendant to travel back home to Israel for the
15 Passover holiday and for that he is very grateful. However,
16 there were some serious doubts in the minds of many people in
17 the government whether or not he would return to the
18 jurisdiction to face these charges. It is not an extraditable
19 offense. He was given his passport back and could travel
20 anywhere he wanted to. He returned to the comfort of his own
21 home, to his wife and children, and yet, in spite of all, this
22 extremely honorable person returns to New York to face a trial
23 because he wants to clear his name. I submit to you, that
24 those are the actions of an honest and honorable person, not a
25 person who sexually assaults others on airplanes.

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1 I submit to you that Rabbi Bidany is not guilty of
2 these accusations and I urge you to find him not guilty.

3 THE COURT: We are going to take a --

4 MR. SARRATT: Your Honor?

5 THE COURT: All right.

6 MR. SARRATT: If Your Honor was going to permit me a
7 few minutes?

8 THE COURT: I will give you what you want.

9 Go ahead. A few minutes.

10 MR. SARRATT: Five minutes would be great, Your
11 Honor.

12 THE COURT: All right.

13 MR. SARRATT: Thank you.

14 (Pause.)

15 THE COURT: All right.

16 MR. SARRATT: Thank you, Your Honor.

17 I want to start by addressing what Mr. Bienenfeld
18 attempted to characterize as inconsistencies in Ms. Lechtman's
19 testimony.

20 Your Honor, I submit that these inconsistencies are
21 entirely manufactured. The first one he pointed out was, was
22 she yelling or was she speaking firmly? Your Honor, that is a
23 nuanced difference, at best. Ms. Lechtman's testimony was
24 clear. She was speaking firmly.

25 But there is no difference that in any way casts

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1 doubt on her credibility about the difference between yelling
2 and speaking firmly. It is not a difference that matters in
3 any way to this case.

4 He has also claimed that there was an inconsistency
5 about Ms. Lechtman's testimony about whether the defendant got
6 up and went to the back of the plane after this happened.
7 First of all, Your Honor, it's undisputed he did get up and go
8 to the back of the plane. That's what happened.

9 Ms. Lechtman also explained exactly how that came to
10 be that she said that. She got up and complained to
11 Ms. Ferro, and when she bent back to look for the defendant,
12 she saw he was not in his seat but in the back of the plane.
13 It was entirely reasonable for Ms. Lechtman to infer that he
14 had gotten up and gone to the back of the plane. This is an
15 inconsistency that simply does not exist.

16 The defendant also tried to create an inconsistency
17 between terminology. He said, was the defendant groping, was
18 he grabbing, was he massaging, as if those words mean
19 something different in this case. They don't.

20 He also tried to make an inconsistency about the way
21 Ms. Lechtman said she was seated. Her testimony on this point
22 was precise. She fell asleep with her head on the tray table.
23 Then after, she was awoken, she covered herself back and she
24 was sitting straight up.

25 The fact that in a report written by someone else of

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1 an interview with her wrote down that she put her head back on
2 the tray table in no way casts doubt on Ms. Lechtman's
3 credibility. Her testimony here was clear and her memory was
4 clear.

5 Your Honor, I just want to make a crucial fact in
6 this case very clear. Ms. Lechtman has never said anything
7 different than the fact that the defendant touched her groin,
8 that he jumped back, that he jerked his hand back, and then a
9 very short time later he touched her breasts and that he was
10 moving his hand when he did and that he was watching it.
11 There is no inconsistency whatsoever in the victim's testimony
12 on the crucial facts of this case.

13 Mr. Bienenfeld also attempted to suggest that the
14 victim somehow didn't believe that the defendant was invading
15 her personal space prior to the time that this happened. That
16 simply is not what she said. She gave clear testimony that
17 throughout the flight he had been steadily invading her space,
18 that he first leaned towards her, that he then had his hand
19 resting on her seat, that he then was rubbing her leg with his
20 leg, and all of this, Your Honor, all of this, didn't cause
21 Ms. Lechtman to jump to the conclusion that she was being
22 assaulted. Rather, she gave the defendant the benefit of the
23 doubt, particularly given his religious background. She gave
24 him the benefit of the doubt, until it was absolutely clear
25 that this was intentional, that this was an assault, and that

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1 he was purposely gratifying himself by touching her.

2 Mr. Bienenfeld struggled to come up with a motive
3 for Ms. Lechtman to give false testimony here. But, Your
4 Honor, that simply makes no sense. Why would she lie?

5 Mr. Bienenfeld attempted to suggest that this was perhaps
6 because she wants money, perhaps that's how this whole thing
7 came about. She wants to pursue a civil suit when she gets
8 back to Israel.

9 Your Honor, she was candid with the Court in saying
10 that she has considered bringing a lawsuit in Israel. She has
11 not decided whether she will bring one; but given what the
12 defendant did to her, it's not all surprising that she is
13 considering all of her options, including bringing charges in
14 Israel.

15 Your Honor, it was a tremendous inconvenience for
16 Ms. Lechtman to have to travel back from Israel, to interrupt
17 her military duties and to go to her commanding officers and
18 seek permission to come back here. It is not at all
19 surprising that she first wanted to see if there might be
20 something she could do in Israel. And Ms. Lechtman told you
21 exactly what she wanted to see out of this case; she wanted to
22 see that justice was done.

23 Contrast that with the defendant's possible motives
24 to lie in this case, about whether he was concerned for his
25 reputation, about whether he was concerned about being able to

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1 come back to the United States. He just wouldn't give a
2 straight answer to those questions.

3 But, Your Honor, I just want to urge the Court to
4 consider what it is the defendant is suggesting when he argues
5 that Ms. Lechtman is doing this for money. How could that
6 come about? She gets on a plane, traveling here with other
7 officers, to go around and give speeches at events and schools
8 and dinners, and she sits down next to a middle aged,
9 conservative religious man, who by his own admission has very
10 little money. And she says to herself, hey, finally, I have a
11 great idea for getting rich. I have a way to make money. I
12 am going to accuse this man of touching my groin and my
13 breasts and then I'll pretend to be upset and run to the
14 flight attendant and then hopefully they'll give me a business
15 class seat and then later, if I am able to bring suit against
16 him, perhaps I'll get paid.

17 Really? Your Honor, that is simply absurd. That is
18 simply absurd.

19 Mr. Bienenfeld also made several arguments about the
20 government attempting to put forward an admission by the
21 defendant in this case that he did this. And, I submit, Your
22 Honor, that's not at all what the government has done. The
23 government has attempted to put on testimony about precisely
24 what the defendant said after these events happened and we put
25 on three witnesses who told you exactly that.

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1 Ms. Lechtman told you what he said. Aviel Silber
2 told you what he said. Officer Martinez told you what he
3 said.

4 But, Your Honor, none of those witnesses said that
5 the defendant came out and admitted this. None of those
6 witnesses said that.

7 What the witnesses said though was exactly the same
8 thing. The defendant suggesting to Your Honor that perhaps
9 three people got this wrong, in exactly the same way, that
10 doesn't make sense.

11 He's also tried to suggest that perhaps this was all
12 lost in the translation. This is a translation problem.

13 But, Your Honor, the conversation with Aviel Silber
14 leaves no room for doubt on that point. Aviel Silber
15 testified yesterday, he grew up in Israel. The man speaks
16 four languages, but Hebrew, Hebrew is his first language. He
17 has no problem speaking in Hebrew. In fact, that's part of
18 his job for Delta Airlines, is to be on flights with Hebrew
19 speakers and translate.

20 And the conversation that Mr. Silber had with
21 Mr. Bidany was in Hebrew. That was the point of Mr. Silber
22 coming to the back of the airplane, to speak in Hebrew.

23 There is no translation error, Your Honor. It
24 simply doesn't hold up.

25 I believe the defense counsel also suggested that

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1 the defendant never told Mr. Silber that he wanted to
2 apologize. Mr. Silber's testimony on that point was clear.
3 That is exactly what Mr. Silber heard him say and that's
4 exactly why the defendant approached Mr. Silber. He wanted to
5 apologize. He wanted to talk to her. He wanted to use his
6 skills as a counselor to try to smooth this over and make this
7 thing go away before that flight landed.

8 Now, the defendant's central contention in this case
9 has been that he was asleep, that he was asleep and that the
10 next thing he knew he woke up to Ms. Lechtman yelling at him.

11 Your Honor, if these were the random reaches of a
12 sleeping man, why is it that his hands were moving? If these
13 were the random reaches of a sleeping man, why is it that the
14 defendant had such perfect accuracy, two times in a row, in
15 reaching Ms. Lechtman's private areas?

16 Is that a coincidence?

17 That doesn't make any sense, Your Honor.

18 Now, the defendant also suggested that Ms. Lechtman
19 can't be believed because she should have complained sooner.
20 She should have gone to the flight attendant immediately or
21 perhaps Mr. Bienenfeld suggested that Ms. Lechtman is to be
22 faulted for not using her defense training somehow right there
23 on the airplane to assault Mr. Bidany back, that she is a
24 trained fighter. She should have just taken matters into her
25 own hands.

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1 We submit, Your Honor, Ms. Lechtman acted perfectly
2 reasonably and with remarkable poise in what she did here.
3 Despite the defendant's consistent invasions of her space, she
4 did not jump to a conclusion. She was aware of and respectful
5 of his religious beliefs and she was asleep on that plane and
6 she awoke to find the man next to her, to her shock, massaging
7 and rubbing her groin. But she wanted to make absolutely
8 sure, Your Honor. It was perfectly clear to her, even at that
9 point, what an important matter this was. She wanted to make
10 sure that she was right. And she was.

11 It was only seconds to a minute or two later that
12 the defendant reached over again. This time he grabbed her
13 chest. He was grabbing her breasts for a matter of seconds
14 before she stood up and immediately confronted him.

15 Now, Your Honor, the defendant also tried to suggest
16 that Ms. Lechtman couldn't be believed because she didn't have
17 a precise recall of the timing of these events. Your Honor, I
18 submit, the questions that Ms. Lechtman was asked at that
19 point when Your Honor sustained an objection were misstating
20 what was in the criminal complaint in this case. So the Court
21 should disregard that issue.

22 But you also heard the defendant yesterday when he
23 had a couple of chances to answer questions about the precise
24 timing of when these events happened on the aircraft, he
25 didn't know either. That's because nobody would. Passengers

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1 on an airplane, particularly when they don't know an extremely
2 significant event is about to happen, don't keep a log of what
3 time their dinner arrived, what time they fell asleep, what
4 time they woke up, what time they went to the bathroom.
5 That's not the way people act on airplanes.

6 But you also heard other testimony about the way
7 people act on airplanes and it was very clear. Your Honor,
8 Ms. Ferro testified that she has been on more than a thousand
9 flights. More than a thousand in her almost nine years as a
10 flight attendant and she has never heard anything like this.

11 Your Honor, we submit that the defense argument in
12 this case is simply preposterous. People do not assault other
13 people on airplanes while they are asleep. Sleeping people do
14 not reach over to the passenger next to them and grab their
15 groin and then, by coincidence, grab their other private areas
16 only a moment later. That is not consistent with the defense
17 position, that the defendant was asleep in this case.

18 Your Honor, I just want to end with what I think are
19 the absolutely clear points in this case that make it beyond a
20 doubt that the defendant committed this crime.

21 You heard testimony from Ms. Lechtman that when she
22 looked at him a second time his eyes were open.

23 Your Honor, he had been startled only a moment
24 before and he jerked his hand back.

25 Your Honor, his hand wasn't still as a sleeping

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1 person's would be. It was moving.

2 If he was asleep, why, Your Honor, why did he touch
3 only in those moments her groin and then her breasts?

4 Your Honor, the evidence in this case leads to one
5 conclusion, and that is, that the defendant intentionally
6 assaulted Ms. Lechtman on that plane, and I again ask
7 respectfully that the Court hold the defendant accountable for
8 his actions.

9 Thank you.

10 THE COURT: All right. We are going to take a
11 recess until 2:00 o'clock when I expect to render a verdict.

12 I will see you at 2:00 o'clock.

13 MR. BIENENFELD: Thank you, Judge.

14 MR. SARRATT: Thank you, Your Honor.

15 (Recess taken as indicated.)

16 (Continued on next page.)

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1 A F T E R N O O N S E S S I O N.

2 THE COURT: Is there anything else before I render a
3 verdict?

4 MR. SARRATT: No, Your Honor. Thank you.

5 MR. BIENENFELD: Just if you want the defendant to
6 stand.

7 THE COURT: He can remain seated.

8 MR. BIENENFELD: Thank you.

9 THE COURT: Having weighed the testimony of the
10 witnesses and the exhibits received into evidence, I find
11 beyond a reasonable doubt that the defendant, Gavriel Bidany,
12 is guilty of assaulting Bat-El Lechtman in violation of
13 18 USC Section 133(A)(5) and 49 USC Section 46506(1).

14 Ms. Lechtman's testimony that Rabbi Bidany
15 unlawfully touched her groin and breasts, or breast, on
16 March 27, 2011 on Delta Airlines flight 269 from Tel Aviv,
17 Israel to New York City, is compelling and wholly believable.
18 The purported inconsistencies between her testimony in court
19 and her various statements to law enforcement officers are
20 immaterial, even if they exist at all. Also, I do not find
21 any reason to discredit Ms. Lechtman's testimony based on the
22 argument that she has a motive to make a false allegation
23 against Rabbi Bidany. Most importantly, Ms. Lechtman's
24 testimony is entirely consistent with the testimony of the two
25 disinterested witnesses, Mr. Silber and Ms. Ferro; which

1 stands in stark contrast to Rabbi Bidany's testimony, which is
2 different than every witness who testified at trial, even on
3 insignificant and immaterial details.

4 Finally, I find Rabbi Bidany's testimony to not be
5 worthy of belief in light of his inability to provide simple
6 answers to simple questions, as noted by the prosecutor. I do
7 not believe that Rabbi Bidany's failure to do so is
8 attributable to interpretation problems. Despite a few
9 mistakes, the interpreters appear to have done a fine job in
10 this case.

11 In all, there is no question in my mind that the
12 events transpired as Ms. Lechtman contends, and, therefore, I
13 find that Rabbi Bidany is guilty.

14 Mr. Sarratt, you wanted to say something?

15 MR. SARRATT: Yes, Your Honor.

16 Having reviewed the provisions of Title 18
17 USC Section 3143, which is the statute that governs after a
18 defendant has been convicted for the time waiting sentence, I
19 believe that that provision may not apply because this is a
20 Class B misdemeanor and, therefore, the guidelines, the
21 Sentencing Guidelines under Section 1B1.9 do not make any
22 recommendation to Your Honor as to what the appropriate
23 sentence should be.

24 Section 3143 appears to apply the standard of and
25 places the burden on the defendant of putting forth clear and

1 convincing evidence that he would continue to appear for the
2 sentence.

3 So I think that heightened standard does not apply
4 here, but that the ordinary standard under Section 3142 does
5 apply.

6 Mr. Bidany is obviously a citizen of Israel and has
7 minimal ties to the United States, and although Mr. Bidany was
8 granted bail pending -- while he stood accused of these
9 charges, he now stands convicted, the government simply
10 respectfully submits that makes an enormous difference and
11 would ask that he be taken into custody.

12 THE COURT: Counselor?

13 MR. BIENENFELD: Your Honor, I ask that my client
14 remain out on bond. His passport has been surrendered. There
15 is no way he can leave the country. He is on home monitoring
16 here and there is a half a million dollars bond on him.

17 The sentencing in other cases in this district have
18 been quite light. I haven't seen any jail sentencing, quite
19 frankly, in this district, in the Eastern District, cases of
20 similar facts and similar matters and the similar statutes as
21 well. So I haven't seen any jail time. So I am asking to
22 these let him remain out on bond pending your sentencing.

23 THE COURT: Let's table the issue of remand for a
24 moment. Let's talk about sentencing.

25 In Class B misdemeanor cases I don't think a

1 presentence report is mandated. It says that the statute, if
2 I am correct, 18 USC 3401(c) says I may direct Probation to
3 prepare a presentence report as long as the district judge
4 agrees with that.

5 What is the government's position or Rabbi Bidany's
6 position on whether I need a presentence report?

7 MR. SARRATT: If I may just have one moment, Your
8 Honor?

9 THE COURT: Sure.

10 (Pause.)

11 MR. SARRATT: Your Honor, the government would
12 request a presentence report, if --

13 MR. BIENENFELD: I don't think it is necessary. I
14 believe that Rabbi Bidany would like to be sentenced. If the
15 sentence is a sentence of probation, perhaps we could discuss
16 how we could do probation at home. He would like to go back
17 home, if that's possible.

18 So I would like not to delay that. I know the
19 presentence report would take at least six weeks, from my
20 experience, and I don't think that a case like this requires a
21 six-week wait for a sentencing.

22 MR. SARRATT: Your Honor, we defer to your
23 discretion on that matter.

24 THE COURT: Putting aside a presentence report,
25 would the government like to submit a letter brief or letter

1 submission on sentencing?

2 MR. SARRATT: We would, Your Honor.

3 Thank you.

4 THE COURT: How soon could you do that?

5 MR. SARRATT: As soon as Your Honor asks for it.

6 THE COURT: You give me some guidance.

7 MR. SARRATT: Monday or Tuesday, Your Honor, we
8 could submit something.

9 THE COURT: How long do you need to respond?

10 MR. BIENENFELD: A day.

11 THE COURT: Okay.

12 I am not going to ask for a presentence report from
13 Probation. I will entertain the government's letter on
14 Monday, May 9th. I would like to see Rabbi Bidany's response
15 on Tuesday, May 10th; and sentencing will be set for Thursday,
16 May 12th, at 11:00 am.

17 In the interim, given the short period of time
18 Rabbi Bidany will remain on bail, current conditions as set by
19 Judge Orenstein, I guess originally set by Judge Go and then
20 modified by judge Orenstein.

21 So there you have it.

22 MR. BIENENFELD: May 12, what time?

23 THE COURT: 11:00 am.

24 MR. BIENENFELD: Thank you.

25 MR. SARRATT: Your Honor, just so it is clear, Judge

1 Orenstein had previously granted a limited alteration to the
2 defendant's bail conditions, to allow him to travel to Israel
3 for Passover and then return. I just want to make sure the
4 record is clear, that the defendant is not at this point
5 allowed to travel to Israel.

6 THE COURT: No, he is not allowed to travel.

7 I had thought Judge Orenstein also modified the
8 curfew.

9 MR. SARRATT: That is correct.

10 THE COURT: That's really what I was referring to.

11 MR. SARRATT: Precisely.

12 My only -- my only clarification is that the travel
13 to Israel, that modification is over, and he may not do that.

14 THE COURT: Sure.

15 Practically speaking, he doesn't have his passport
16 anymore.

17 MR. SARRATT: Correct.

18 THE COURT: It would be very difficult for him to
19 leave the country.

20 MR. SARRATT: Correct.

21 THE COURT: I will note that if he does leave the
22 country, that would subject him to a bail jumping charge which
23 would place him in a much more precarious position than he
24 already is in.

25 MR. SARRATT: Thank, Your Honor.

1 MR. BIENENFELD: Your Honor, would you consider
2 exonerating the 250,000 cash portion of the bail and just
3 remaining with the bond portion for the real estate?

4 THE COURT: No.

5 MR. BIENENFELD: Okay.

6 THE COURT: Anything else?

7 MR. SARRATT: Thank you, Your Honor.

8 THE COURT: Thank you.

9 (Matter concludes.)
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